

## REMARKS

Reconsideration of the above-identified application in view of the foregoing amendments and following arguments is respectfully requested.

Claims 74-114 have been deleted. Claims 115-126 have been added. No new matter has been added as a result of these amendments.

### Objections to Claims

Claims 84 and 85 are objected to under 37 CFR §1.75 as being substantially duplicative of claims 74-75. Claim 103 is objected to as being substantially duplicative of claim 96. Claims 108 and 109 are objected to as being substantially duplicative of claims 100 and 101. Claims 113 and 114 are objected to as being substantially duplicative of claims 94 and 95. Applicants respectfully traverse this rejection.

Claims 74, 75, 84, 85, 94, 95, 96, 100, 101, 103, 108, 109, 113 and 114 have been deleted. Therefore, in view of the deletion of these claims, Applicants submit that the objections to claims has now been rendered moot and should be withdrawn.

### Rejection of Claims Under 35 U.S.C. §102(e)

Claims 82, 94-96, 100, 101, 103, 104 and 108-114 are rejected under 35 U.S.C. §102(e) as being anticipated by An-Young et al. (U.S. Patent No. 5,856,136). Applicants respectfully traverse this rejection.

Claims 74-114 have been deleted and replaced with new claims 115-126. Applicants submit that with the cancellation of claims 74-114 that this rejection has now been rendered moot. However, Applicants would like to address one of the arguments made by the Examiner in connection with previously pending claims 96 and 103. New claim 115 is directed to a kit. According to this claim,

this kit comprises a container containing at least one polynucleotide consisting of a sequence selected from the group consisting of SEQUENCE ID NOS:1-5, 7-12 and degenerate codon equivalents of SEQUENCE ID NOS:1-5 and 7-12. The Examiner argues in the Office Action that because previous claim 96 recited a kit “comprising” that the further recitation of “consisting of” is non-limiting.

Applicants disagree with this statement by the Examiner. Applicants respectfully submit that the transition word “comprising” used in the preamble of the kit claims should be interpreted to mean that the kit can contain components in addition to at least one container. For example, as shown in newly added dependent claim 116, the test kit can further comprise a container that contains tools useful for the collection of a sample. Moreover, the kit could further contain instructions describing how to use the kit. Thereupon, Applicants submit that the further recitation of “consists of” following the term “polypeptide”, such as in new claim 115, is limiting.

Additionally, with respect to new claim 126, An-Young et al. fail to disclose an isolated polynucleotide that encodes polypeptide consisting of amino acid sequence of any SEQUENCE ID NOS: 25-29.

As mentioned previously, claims 74-114 have been deleted and replaced with new claims 115-126, therefore, this rejection is moot as should be withdrawn.

Claims 96, 100, 101, 103, 104, 108, 109, 110, 111 and 112 are rejected under 35 U.S.C. §102(e) as being anticipated by Reiter et al. Applicants respectfully traverse this rejection.

Claims 74-114 have been deleted and replaced with new claims 115-126. Applicants submit that with the cancellation of claims 74-114 that this rejection has now been rendered moot.

#### Rejection of Claims Under 35 U.S.C. §101

Claims 78, 79, 89, 90, 91, 92, 100, 101, 108, 109, 110, 111 are rejected under 35 U.S.C. §101 as directed to non-statutory subject matter. Applicants respectfully traverse this rejection.

Claims 74-114 have been deleted. New claims 115-126 contain claims to “an isolated recombinant expression system” and “an isolated cell” as suggested by the Examiner. Applicants thank the Examiner for her helpful suggestions.

#### Rejection of Claims Under 35 U.S.C. §112, Second Paragraphs

Claims 74-81, 83-93 and 96-112 are rejected under 35 U.S.C. §112, second paragraph, as being indefinite. Specifically, the Examiner rejected the phrase “degenerate coding sequences thereof”. Claims 74-114 have been deleted. Applicants have taken this rejection into consideration in the drafting of new claims 115-126. Therefore, this rejection is now moot and should be withdrawn.

#### Rejection of Claims Under 35 U.S.C. §112, First Paragraph

Claims 74-81, 83-93, 96, 100, 101, 103, 104, 108, 109, 110, 111 and 112 are rejected under 35 U.S.C. §112, first paragraph as containing subject matter that was not described in the specification in such a way as to reasonably convey to one skilled in the art that the inventors had possession of the invention. Applicants respectfully traverse this rejection.

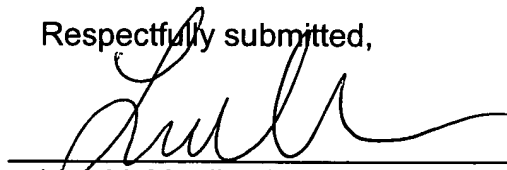
Claims 74-114 have been deleted. In view of the deletion of these claims, Applicants submit that this rejection is now moot and should be withdrawn.

Applicants submit that in view of the aforementioned and arguments that the claims are now in condition for allowance.

Should the Examiner have any questions concerning the above, she is respectfully requested to contact the undersigned at the telephone number listed below. If any additional fees are incurred as a result of the filing of this paper, authorization is given to charge deposit account number 23-0785.

Respectfully submitted,

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### CERTIFICATE OF MAILING

I hereby certify that this amendment is being sent via First Class Mail to the Commissioner of Patents, PO Box 1450, Alexandria, VA 22313-1450 on October 14, 2003.

  
Barbara Towns